

ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 05-113
Table of Allotments,)	RM-11195
FM Broadcast Stations.)	
(Ely and Spring Creek, Nevada))	
)	

To: Secretary, FCC

REPLY COMMENTS OF RUBY RADIO CORPORATION

Ruby Radio Corporation ("RRC"), by its attorney, hereby replies to the comments that were filed in the above-captioned rulemaking proceeding by Holiday Broadcasting Elko, licensee of Station KRJC, Elko, Nevada ("Holiday"), on April 26, 2005.

Although the Notice of Proposed Rulemaking in this proceeding specifically directed that comments filed in the proceeding were to be served upon RRC's undersigned counsel, and the copy of the Federal Register notice of the proceeding that Holiday attached to its Comments reflected that Holiday was aware of this fact (note the "x" next to the address of RRC's counsel), Holiday did not serve RRC's counsel or RRC with the Comments. There should be serious consequences for failing to serve Comments on a petitioner, as unserved Comments are, in effect, *ex parte* communications. The appropriate consequences for Holiday's

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failure to serve RRC or its counsel would be to dismiss Holiday's Comments without giving them any consideration.

If Holiday's Comments are considered notwithstanding the fact that they were not served on petitioner or its counsel, they contain no information which would justify denial of the allotment changes proposed by RRC. Holiday's principal objection to the proposal is that it believes that there are too many radio stations in the Elko area. In other words, Holiday is concerned about competition with its station KRJC. However, Holiday makes no effort to explain why its parochial concerns about competition should be allowed to trump the goals of Section 307(b) of the Communications to deny Spring Creek, a community of more than 10,500 people, its first local radio service.

Holiday's argument that the Commission should not allow KHIH-FM's channel to be reallocated to Spring Creek, because the station "was moved by Ruby Radio Corporation from Ely, Nevada just two and one half years ago" is both factually wrong and irrelevant. Station KHIH-FM was moved to Carlin, Nevada, by the former licensee of the station nearly 6 years ago. RRC had nothing to do with that move. In any event, the fact that KHIH-FM was moved from Ely to Carlin is irrelevant to the issue at hand which is whether the goals of Section 307(b) of the Communications Act will

be served by moving KCLS-FM from Ely to Spring Creek.

Clearly they will be, as (i) Spring Creek with a population of more than 10,500 currently has no local service whereas Ely, with a population of just over 4,000¹ will still have two local radio stations after KCLS-FM moves to Spring Creek and (ii) the proposed reallocation of KCLS-FM's channel will result in a net gain of service to 27,000 people.

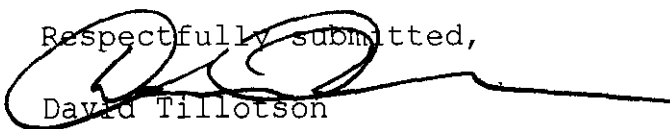
Finally, Holiday's reference to the fact that KHIX-FM maintains its studios and offices in Elko rather than Carlin and its speculation that RRC will locate the studios for KCLS-FM in Elko as well is also irrelevant to the issue at hand. The Commission's rules allow stations to locate their main studios anywhere within their principal city contour or a 25 mile radius of their community of license, whichever distance is greater. However, locating a studio outside of a station's community of license does not relieve the station of its obligation to provide a local service to its community of license. KHIX-FM provides a local radio service to Carlin airing public affairs programming to address the issues and problems of that community and public service announcements for

¹ Between 1999 when a mine in the Ely area closed and 2004 when the mine reopened, the population of Ely shrunk from approximately 8,500 to 3,500.

organizations and events in Carlin. RRC will provide a similar local service to Spring Creek when KCLS-FM's community of license is changed to that community.

As shown above, Holiday has advanced no valid reason why the changes in KCLS-FM's channel classification and city of license proposed in this proceeding should not be adopted. Therefore, as adoption of the proposed allotment changes will serve the goals of Section 307(b) by providing Spring Creek with its first local service, the proposal should be adopted.

Respectfully submitted,



David Tillotson

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Attorney for Ruby Radio
Corporation

Date: May 19, 2005

DECLARATION OF KEN SUTHERLAND

Ken Sutherland states under penalty of perjury as follows:

1. I am President of Ruby Radio Corporation, petitioner in MM Docket 05-113
2. The facts set forth in the foregoing Reply Comments are true and correct to the best of my information, knowledge and belief.


Ken Sutherland

May 19, 2005

CERTIFICATE OF SERVICE

I, David Tillotson, do hereby certify that a copy of the foregoing Counterproposal has been sent via first class United States mail, postage pre-paid, this 19th day of May 2005, to:

Ronald J. Carlson
Holiday Broadcasting of Elko
Box 1626 Elko, NV 89801


David Tillotson